

No. 13288

# Supreme Court of Illinois

Johnson et al

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vs.

People

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## SUPREME COURT.

ANDREW J. JOHNSON,  
CORNELIUS F. BACKUS, and  
EDGAR L. MORSE,

Plaintiffs in Error,

vs.

The People of  
THE STATE OF ILLINOIS,

Defendants in Error.

April Term, 1859.

### ABSTRACT.

1 INDICTMENT—Filed June 17th, 1858, in June Term, 1858, Recorder's  
2 Court of Chicago—contains but one count for conspiracy :

“That defendants, on the 3d day of May, 1858, at Chicago, wickedly and unjustly devising and intending one Joshua B. Casey to defraud and cheat of his goods and property, did then and there falsely and fraudulently conspire, combine, confederate and agree together among themselves, to get and obtain knowingly and designedly, by false pretenses, of the said Joshua B. Casey, one horse, of the value of six hundred dollars, the property of him, the said Joshua B. Casey, with the intent then and there to cheat and defraud the said Joshua B. Casey of the said horse.”

3 To this indictment, plaintiffs in error demurred in proper persons.

4 Plaintiffs in error applied for continuance immediately, and filed three affidavits.

Bill of exceptions does not show what was done with demurrer or application.

5 Cornelius F. Backus, one of defendants, filed three affidavits for continuance of cause and separate trial—showing that on the same day in which indictment was found, he is required to go to trial; that he has a good defence, and that one Charley S. Brodber was a material witness, then  
6 absent; that he expected to procure his attendance, and could not safely



proceed to trial; and discloses what he expects to prove—that he, Backus, had nothing to do with the trade—no way interested—and that the horse was sold to Johnson, &c.

7, 8        Makes application for separate trial. Shows that he was included, so  
9        as not to be a witness; shows that he cannot have fair trial there, and  
         the reasons and facts.

9        Then a jury was called, who were imparneled to try the cause, and  
         the following evidence was given, and no other:

EVIDENCE.—The people proved by their first witness, Casey, that in  
10        April, 1858, he came to Chicago to sell a stallion horse, worth \$600, and  
         met Backus at the corner of Clark and Randolph Streets, where he asked  
         him to bring his horse to his stable, and he thought he knew a man that  
11        would purchase the horse, by the name of Johnson. After talking, &c.  
         Casey took the horse to Backus' stable on Tuesday, and horse was driv-  
         en and tried by parties. On this day, Casey and Johnson had conver-  
         sation about purchase of horse—alone—to be paid by notes made by  
         Morse, \$300 each, secured by mortgage—in which Johnson stated that  
         Morse would shave the notes, \$50 off—offered notes and \$25 for the  
         horse. Backus and Casey went to see Morse, and Morse said he would  
         cash the notes the next day for \$25 off. Went back to stable, and  
         Johnson agreed to stand the half of the \$25—that is, give the notes and  
12        \$12½ for the horse. Next day, the notes were handed to Casey, and he  
         and Backus went to see Morse. Morse expressed himself ready to take  
         them up. Mortgage not having been assigned, it was so stated by  
         Backus, and parties departed to have Backus make the assignment.  
         Went to lawyer's office; had assignment of mortgage drawn from  
13        Backus to Casey. Went back, and Backus took mortgage and went and  
         acknowledged the assignment; and Casey took the notes, and went to  
         get the money of Morse. Could not find Morse. Came back and asked  
         Johnson, and he and Casey looked for Morse. Johnson said he presumed  
14        Casey could get it after dinner. After dinner, went back to stable, and  
         could not find Johnson or Morse, or the horse. Backus said Johnson  
         had sent horse to the blacksmith shop. Stayed at stable all the after-  
         noon. Did not see Johnson or Morse. Next morning met Morse, and  
15        asked him to cash notes. Morse replied, he did not know whether he  
         would or not. Morse and Casey went to Sherman's and other places, to  
         raise the money; could not get any money, and they went back to  
         Backus' stable. On Saturday morning, I saw Johnson and inquired  
         about the horse, and Johnson said he had sent him out in the country.

13        In going down to the Attorney's office to have the assignment drawn,  
         Casey & Johnson sent a man by the name of Chapman after the horse,



15 Johnson handing \$5 to Chapman to pay for the horse keeping. This  
witness testified that he had not *seen* Chapman since the *Thursday* of the  
16 *trade*. Said he gave the mortgage to Chapman to be recorded in Lake  
county, Indiana. [Notes were here produced—two notes of \$300 each,  
made by Morse, dated May 4, 1858, coming due, 1st one thirty days after  
date.]

Casey said he received notes and mortgage of Johnson, and was advised by Hudson, attorney, to send mortgage to Lake county, Ind., for record.

*Question.*—Who signed the mortgage, or paper called mortgage? Objected to by defendants, and objection overruled, and defendant excepted. Thinks it was signed by Johnson.

Casey said he had not seen horse since he saw him with Chapman on Clark street.

17 On Cross-examination, said he never saw horse in stable of Backus—  
notes were given to him then, never delivered the horse then to Johnson.  
said he sold horse provided Morse would cash the notes and mortgage,  
18 and was to have \$12½ and did not get it, he gave an order to  
Chapman for it. Morse said (May 4th,) he would cash the notes  
next day. He consulted with no person with regard to the responsibility of these men. He never delivered the horse to these men or Johnson. Did not know Morse's handwriting. Did not tell Wells  
19 had Backus arrested, to keep him from being a witness. Never tried to  
get horse back. Never offered notes or mortgage to the man I received  
them of, and demanded payment. I never demanded horse back. Commenced prosecution on his own account.

On re-examination.

20 *Question.*—Why did you give the order to Chapman? Objected to by  
defendants, overruled and defendants excepted.

Chapman said it is not likely you will see Johnson before you get pay on the notes, and asked me to give him the order as he was going to Crown Point.

21 Charles Wilcox.—Kept livery stable back of Briggs' House. Horse  
was kept there by Casey. Left stable May 3d. Horse was taken away  
his keeping not paid for.

21 Henry A. Kuffman, policeman, made the arrest, asked Morse what he



was going to do about the notes. Asked him if he would take the notes at \$300? Said he would if he could.

21 Charles Pfeif—told Casey I was going to sue him for the keeping of the horse; Backus said it was all right, Johnson had bought the horse and had gone after the money to pay Casey. Am hostler.

22 Christopher Dennis—hostler—I saw Chapman coming down stairs with the horse; said he was going to exercise the horse.

Cross-Ex.—He helped Casey take care of the horse.

22 A. G. Low—Said, Backus spoke to me this morning about this case.

*Question.*—State conversation in regard to the subject of the horse? Objected to, and objection overruled, and defendants excepted.

23 Backus said there was no conspiracy; that they did beat the man out of his horse; he asked me what kind of a jury he had; he said he had been informed there were two oldish gentlemen who would be hard on him; he asked me about a large man on the jury; I told him I thought they were all liberal minded men; Backus said they would get off, because they were indicted for conspiracy, and not for defrauding Casey of the horse.

23 DEFENCE.—Wilson W. Chase—Was at stable. I saw Casey take the blanket off the horse, and show him to the gentlemen there, Backus, Eddy, Bradbury, Johnson and some others. Casey hitched the horse in the stall—after, in the stable. Went in the saloon; Johnson took out some papers, looked them over—Casey finally took papers. Previous to going in the saloon, Casey said he had sold to Johnson, not traded. Johnson was going to dinner; Casey asked him when he would be back; he said 2 oclock. Horse had gone to shop when Johnson and Casey talked together.

23 Patrick Guilfoil—Worked for Backus; was there at the time of the trade. Casey brought the horse in the stable—said he had sold him to Johnson. Chapman led the horse up to street door; Casey asked Backus where horse should be put. Backus said, take Johnson's horse out of her stall, and put him in her stall. I took out the mare, and Casey took the horse and put him in the stall, and took off the blanket, when  
23 Mr. Chase spoke to him.

*Cross Examined.*—Eddy, Bullwinkle, and others were there. Charles Bullwinkle was a veterinary surgeon, and at stable. I heard Backus order him to put the horse in the stall; he led his horse ahead, &c.



26 Peter Caldwell—am a constable; at the time had Casey under arrest; he said he sold the horse to Johnson for notes to be cashed by Morse, at a discount of \$25 or \$50. Casey told me he had Backus included with the others, to prevent him from being a witness for them.

26 George W. Sampson saw the horse five or six rods from the stable; Guilfoil was leading him; when I got to the stable Casey was there.

27 Russell A. Eddy—was at the stable; Casey came there with another gentleman; he was there with a horse; the horse had a blanket on. Mr. Johnson told me he bought the horse in the presence of Casey, the horse was there and put in the south part of the barn.

Resides at Crown Point; has known Morse three or four years; I went with Johnson in buggy when they tried the horse.

Cross Ex.:

*Question*—Did you execute any papers to Backus, conveying any land to Backus?

Objected to; objection overruled; defendants excepted.

28 *Answer*—I did convey land, several pieces, to Backus; a piece of land which he might have sold to Morse. I understood from the defendant that it was the same land that secured those notes. The land I sold to Backus I sold to Morse; (same notes,) deeds made out in Crown Point.

I am indicted with Johnson; I am unwilling to place any value upon the lands in question. The land I let Backus have was near Gibbs station. I would not swear there was not more than thirty acres in the land described in the mortgage; will not swear there is twenty acres.

28 Chase was there at the time I speak of, saw Casey receive papers of Johnson; he gave them to him.

28 A. Garrison, said, am an attorney; myself and partner defended the defendants before the police magistrate, Casey then said the last time he saw the horse was on Clark street.

Hudson—am attorney; Casey swore before police magistrate, last time he saw the horse was with Chapman, on Clark street.

29 Cross-Ex.—Casey came to my office with the mortgage; I advised him to send it to Lake Co., Indiana; it was to be returned to me; have not seen it since.

29 Henry Wells.—Live in Lake County, Indiana; have been sheriff 8 years, treasurer 7 years; have known Casey a few days; he told me he



had nothing against Backus, that he had him arrested and indicted with the others, so that he might not be a witness.

31       Morse's character good, and know nothing of his pecuniary circumstances.

Cross-Ex.—Am bail for Morse ; I went to the stable to settle ; Wilcox proposed that if defendants would give up the horse, and pay \$100, that Casey would leave town. I was not told to go by defendants.

30       David Hale—Morse's character is good ; has resided with me ; am merchant.

32       William W. Chase recalled.—The time of Casey and horse being at Backus' stable was the week ending the 8th of May.

32       Charles Wilcox, recalled by the people.—Knows Henry Wells ; he told me defendants would give \$40 or \$50 and the horse to Casey, if Casey would not appear ; (these parties had much other like conversation.)

Backus told me once that he would give the horse and \$50 and settle.

Cross-Ex.—I was in the employ of Kaufinan as detective police man ; *was trying to get evidence.*

33       E. P. Miller—Saw Chase and Johnson talk together, coming up court house steps.

Cross-Ex.—Could not hear what they said.  
Evidence closed.

34       Certificate of the above being all the testimony, and correct.

Defendant's Instructions.

35       1. Defendants ask the court to instruct that the jury are made judges  
Given. of the law and fact.

Given. 2. That it is made the duty of the court to give or refuse instructions to the jury, but they are at liberty and it is their duty, if they believe it to be correct to abide or not abide by the instructions given them by the court.

35       3. That if they believe that Casey has directly and knowingly sworn  
Given. false, in regard to any one particular fact material to the issue, they must



reject his whole testimony unless sustained by other unimpeachable testimony.

Refused. 4. That under this indictment and for a conspiracy to commit an offence, if the defence be actually committed then the defendants cannot be convicted of conspiracy to do what they have already done.

36 Refused. 5. That if they believe the testimony of Casey, that he never delivered the horse to Johnson, and the horse was only to be delivered on the payment by Morse of the two three hundred dollar notes, less twenty-five dollars discount, and that the defendants by a concerted arrangement among themselves, got possession of the horse, and put the horse beyond the reach of Casey, with intent to cheat and defraud Casey out of the horse. That such an offence, amounts to a larceny of the horse, and the defendants cannot be convicted under this indictment, to cheat and defraud Casey out of the horse.

Given. 7. That the declarations of Backus as given in evidence by the witness Low, of what Backus should have said to him Low, after the trial commenced, cannot be used as evidence, only against Backus.

37 Given. 8. That the testimony of Russell A. Eddy, on his cross-examination by the States Attorney, as to the description of the land said to have been mortgaged by Morse, and referred to in this cause, and the contents of the mortgage as to what land it covered, and the notes it secured cannot be used for any other purpose than bearing on the credibility of Eddy.

Given as amended. 9. That if the Jury believe from the testimony, that the sale of the horse was to be on credit, (amended by court, unless that credit be obtained by fraud) for ever so short a time, still that any and all false pretences in regard to sale of the horse must be in writing and signed by the party to be charged.

37 Refused. 10. That if the jury believe from the evidence that the defendants committed a larceny, they cannot be convicted of a misdemeanor.

38 1 INSTRUCTION ON THE PART OF THE PEOPLE.—The jury in this cause are the judges of the credibility of all the witnesses who have testified, and in determining their credibility, they should take into consideration their appearance on the stand, their interest in the case if any, their connection with the defendants or either of them, if any such connection has been shown by the evidence, the contradiction of the witnesses by any or either of them, by other witnesses, and all the facts elicited on the trial.



2 If the Jury believe from the evidence that either of the witnesses who have testified for the defendants have been acting as counsel for the defendants in the trial of this cause, they the jury may take the fact into consideration in determining the credibility of such witness or witnesses.

38 3 If the jury believe from the evidence that the defendants or any two of them acted in concert to obtain the horse of Casey, as charged in the indictment, then the jury should convict the defendants, or any two of them who may have so acted.

39 4 The Jury in determining whether the defendants or any two of them acted in concert to obtain the horse in question as charged in the indictment, should take into consideration the act of the defendants as proved in evidence, and the jury believe from the evidence that they or any two of them did so act, then the jury should find such defendants guilty.

39 5 The gist of this offence is the conspiracy, or unlawful agreement to act in concert for the object charged in the indictment, and although the jury may believe from the evidence the defendants actually obtained the horse of Casey. Yet if the jury believe from the evidence the horse was obtained by a conspiracy, as charged in the indictment, they should find the defendants or any two of them guilty, provided they find from the evidence, any two of the defendants have so acted as charged in the indictments.

40 The jury retired, and returned into court, and found all of the defendants guilty.

40 Defendant's counsel moved for a new trial, motion in writing, assigned the following:

1st. No arrangement of the parties nor no plea entered or issue joined.

41 2d. Because the court refused to give, asked by defendants, No. 4, 5, 6, and 10, and amended one of the others.

3d. Erred in giving the people instructions, all of them.

41 4th. Motion for new trial overruled, and defendant excepts.

42 Motion in arrest of judgment on the following grounds:

1st. Because the defendants have never been arraigned, or requested to plead to said indictment, and no plea never having been put in by the said defendants to the same.

2d. There is no offence charged in the indictment or proved.



3d. If any offence was proved on the trial it was a larceny, therefore the offence charged in the indictment is merged in the felony.

43 Which motion was overruled and defendant excepted.

#### SENTENCE.

44 C. F. Backus to Bridewell 6 months, and fine of \$100, committal till paid.

A. J. Johnson, to Bridewell six months, fine \$100, committal till paid.

E. L. Morse, to county jail 30 days, and fined \$100, committal till paid.

A. GARRISON.

*Attorney for Defendant.*

#### POINTS OF ERROR AS MADE.

1. Court erred in overruling the demurrer.
2. Court erred in overruling the application for continuance.
3. Court erred in refusing separate trial to Backus.
4. Court erred in allowing proof of signature to mortgage with producing it.
5. Court erred in allowing the testimony of Witness Low.
6. Court erred in allowing witness Eddy, on cross-examination, to speak of contents of mortgage, and describe the land.
7. Court erred in trying the cause, defendants not having been arraigned.
8. Court erred in refusing to give defendant's instructions Nos. 4, 5 and 10, and in amending No. 9.
9. Court erred in giving people's instructions Nos. 1, 2, 3, 4 and 5.
10. Court erred in not giving a new trial.
11. Court erred in not arresting the judgment.

A. GARRISON, *Att'y.*



4-201  
Supreme Court

Andrew J. Johnson  
et al  
Plffs in Error

The People of the State of  
Illinois  
Dfts in Error

Abstract

Filed April 29, 1859  
L. Leland  
clerk

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13288

A. Garrison  
Atty.